

Name of Debtor
Marcal Paper Mills, Inc.

Case Number
06-21886

Name of Creditor (The person or other entity to whom the debtor owes money or property):
United States of America

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name and address where notices should be sent:
Jerome MacLaughlin, U.S. Dept. of Justice
P.O. Box 7611, Washington, D.C. 20044
202-616-7162

☒ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR
COURT USE ONLY

Last four digits of account or other number by which creditor identifies debtor:

Check here ☐ replaces
if this claim ☐ amends a previously filed claim, dated: _____

- I. Basis for Claim**
- | | | |
|---|---|---|
| <input type="checkbox"/> Goods sold

<input type="checkbox"/> Services performed

<input type="checkbox"/> Money loaned | <input type="checkbox"/> Personal injury/wrongful death

<input type="checkbox"/> Taxes

<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)

<input checked="" type="checkbox"/> Other <u>CERCLA 42USC9607</u> | <input type="checkbox"/> Wages, salaries, and compensation (fill out below)
Last four digits of your SS #: _____
Unpaid compensation for services performed _____

From _____ to _____
(date) (date) |
|---|---|---|

2. Date debt was incurred: "See Attached"

3. If court judgment, date obtained:

- 4. Classification of Claim.** Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time the case was filed. See reverse side for important explanations.

Unsecured Nonpriority Claim \$ Over\$946,000,000

☒ Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or c) none or only part of your claim is entitled to priority.

Unsecured Priority Claim

☐ Check this box if you have an unsecured claim, all or part of which is entitled to priority.

Amount entitled to priority \$

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries, or commissions (up to \$10,950),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).

Secured Claim

☐ Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:

- ☐ Real Estate ☐ Other _____
- ☐ Motor Vehicle

Value of Collateral: \$

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$

- Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- Other – Specify applicable paragraph of 11 U.S.C. § 507(a)(____).

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

5. Total Amount of Claim at Time Case Filed: \$ _____ 946,000,000
(unsecured) (secured) (priority) (total)

☒ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

- 6. Credits:** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

THIS SPACE IS FOR COURT
USE ONLY

- 7. Supporting Documents:** *Attach copies of supporting documents*, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. **DO NOT SEND ORIGINAL DOCUMENTS.** If the documents are not available, explain. If the documents are voluminous, attach a summary.

- 8. Date-Stamped Copy:** To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Date _____

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

06/13/2007

Jerome MacLaughlin, Trial Attorney

Jerome MacLaughlin
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
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(202) 616-7162

Attorney for United States

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:

MARCAL PAPER MILLS, INC.,

Debtors.

Chapter 11

Case No.:
06-21886 (MS)

PROOF OF CLAIM OF THE UNITED STATES

1. This Proof of Claim is filed by the Attorney General of the United States of America, through the undersigned attorneys, on behalf of the United States Environmental Protection Agency ("EPA"), the United States Department of the Interior ("DOI"), and the National Oceanic and Atmospheric Administration of the United States Department of Commerce ("NOAA"). The Attorney General is authorized to make this Proof of Claim on behalf of the United States.

2. This Proof of Claim asserts claims against Marcal Paper Mills, Inc. ("Debtor") for the recovery of all response costs incurred and to be incurred by EPA and the Department of Justice under the Comprehensive Environmental Response, Compensation, and Liability Act of

1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601 et seq., in connection with the Diamond Alkali Superfund Site.

3. This Proof of Claim also asserts claims against the Debtor for damages for all injury to, destruction of, or loss of natural resources under the trusteeship of NOAA and DOI resulting from the release of a hazardous substance at or to the Site and the reasonable costs of assessing such injury, destruction or loss, pursuant to CERCLA, 42 U.S.C. §§ 9601 et seq.

4. The Diamond Alkali Superfund Site ("Site") includes: a seventeen mile stretch of the Passaic River and its tributaries from the Dundee Dam to Newark Bay known as the Lower Passaic River Study Area ("LPRSA"); the former pesticides manufacturing facility at 80 Lister Avenue, Newark, New Jersey, and the surrounding property at 120 Lister Avenue; the Newark Bay Study Area, which includes Newark Bay and portions of the Hackensack River, the Arthur Kill, the Kill Van Kull; and the areal extent of contamination.

5. The Site is a "facility" within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

6. Debtor filed its Chapter 11 petition on November 30, 2006.

7. From 1946 to the present, Debtor owned and operated a paper plant at which it recycled waste paper in Elmwood Park, New Jersey. Debtor's facility is on the Passaic River upstream from the LPRSA.

8. Debtor is a person within the meaning of Sections 101(21) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(21) and 9607(a).

9. During Debtor's operation of its facility, it discharged wastewater effluent into the Passaic River either through direct outfalls, surface runoff, or when effluent discharged to the Passaic Valley Sewerage Commission trunk line in Elmwood Park bypassed the Sewerage

Commission system, entering the Passaic River directly during heavy rains.

10. Debtor's wastewater effluent included polychlorinated biphenyls ("PCBs") and 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (a dioxin compound known as "2,3,7,8-TCDD").

11. PCBs and 2,3,7,8-TCDD are hazardous substances under Sections 101(14) and 102(a) of CERCLA, 42 U.S.C. §§ 9601(14) and 9602(a).

12. Sampling and assessment of the LPRSA and Newark Bay have shown the presence of numerous hazardous substances, including PCBs and 2,3,7,8-TCDD in the water, sediment, or soils constituting those parts of the Site.

13. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances,

...

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan.

...

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release

14. There were or are releases or threats of releases of hazardous substances at or from the Site within the meaning of Sections 101(14), 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(22) and 9607(a).

15. The releases or threats of releases of hazardous substances from the Site has caused the United States to incur response costs within the meaning of Sections 101(25) and 107(a), 42 U.S.C. §§ 9601(25) and 9607(a).

16. The costs incurred by the United States at the Site are not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. § 300, as amended.

17. In response to a release or a substantial threat of release of hazardous substances at or from the Site, EPA entered into an Administrative Order on Consent in 1994 with a Potentially Responsible Party ("PRP") to undertake a remedial investigation and feasibility study ("RI/FS") for a portion of the Site.

18. Pursuant to a subsequent administrative settlement in 2004 with multiple PRPs (amended in 2005 to include more parties), EPA expanded the scope of the RI/FS to include a larger portion of the Site. In the administrative settlement agreement, EPA obtained agreement from the PRPs to pay \$10,750,000 towards EPA's future costs of performing the RI/FS, which funds EPA has expended at this time. The Debtor is not a signatory to the 2004 AOC as amended.

19. The RI/FS is in its preliminary stages, and EPA has not selected a final remedy for the entire Site and has not estimated final remedial costs for the entire Site.

20. EPA is currently performing a Focused Feasibility Study to evaluate remedial alternatives for potential early-action remediation of a limited portion of the Site and has

estimated the remedial costs for various alternatives for early action remediation.

21. As of January 2007, EPA had incurred approximately \$6,180,000 in unreimbursed past costs in connection with its response to hazardous substances at the Site. EPA has incurred additional response costs since that time, and expect to incur response costs in the future.

22. EPA has estimated that it may incur over \$937,000,000 in connection with its response to hazardous substances at the Site. This estimate includes completion of the RI/FS for the Site at \$37,000,000, and performance of the least-expensive remedial alternative being evaluated for early action for a portion of the Site at \$900,000,000. The Focused Feasibility Study report is currently in draft form. Unless and until EPA issues a Record of Decision selecting a remedy for an early action, it remains possible that any of the alternatives, including a more costly alternative, or none, could be selected. In addition, this estimate does not include performance of a remedy for the entire Site.

23. NOAA and DOI are the federal agencies designated as natural resource trustees for the Site.

24. NOAA and DOI have completed a Preassessment Screen for a portion of the Site and are currently developing a Natural Resource Damage Assessment Plan for the Site. This Plan will determine the compensation required to make the public whole for injuries to natural resources or destruction or loss of these resources.

25. The studies and information available indicate that hazardous substances discharged into the Site have harmed natural resources at the Site, including, but not limited to, aquatic species in the Passaic River and human recreational activities on and near the Passaic River.

26. NOAA has incurred approximately \$1,505,552 in unreimbursed past costs in

assessing natural resource damages at the Site.

27. DOI has incurred approximately \$869,582 in unreimbursed past costs in assessing natural resource damages at the Site.

28. NOAA and DOI expect to incur additional costs of assessing the injury destruction, or loss of natural resources at the Site, such as completion of the Natural Resource Damage Assessment Plan for the Site.

29. NOAA and DOI expect to seek natural resources damages arising from the Site, but at this time no assessment of these damages has been completed.

30. As of June 13, 2007, the Department of Justice had incurred approximately \$284,094 in unreimbursed past costs in connection with EPA's response to hazardous substances at the site and NOAA's and DOI's assessment of natural resource damages at the Site.

31. The Department of Justice expects to incur additional costs in connection with EPA's response to hazardous substances at the site and NOAA's and DOI's assessment of natural resource damages at the Site.

32. No judgments have been rendered on the claims asserted herein.

33. No payments to the United States have been made by Debtor or any other PRP on these claims, other than as discussed above.

34. This Proof of Claim asserts claims for the known liability of Debtor to the United States on behalf of EPA, NOAA, DOI, and the Department of Justice. The United States reserves the right to amend this claim to assert subsequently discovered liabilities, or to update the amounts of the claims set forth above.

35. This Proof of Claim is also filed to the extent necessary to protect the United States' rights relating to any insurance proceeds received by the Debtor relating to the Site.

36. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to Debtor by any agency of the United States. The United States reserves the right to amend this claim to assert credits currently unknown by the undersigned.

37. The United States' claims included in this Proof of Claim are asserted as general unsecured claims.

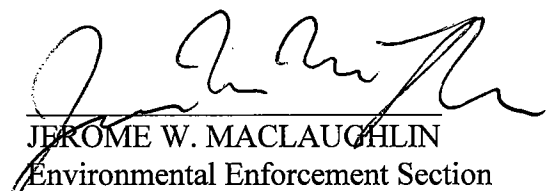
38. Debtor's liability under Section 107 of CERCLA, 42 U.S.C. § 9607(a), is joint and several with other liable parties.

39. For the foregoing reasons, Debtor Marcal Paper Mills, Inc. is liable to the United States pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607(a) for the costs incurred or to be incurred by EPA, DOI, NOAA and the Department of Justice, and for the natural resource damages to be assessed by DOI and NOAA.

June 14, 2007

Respectfully Submitted,

RONALD J. TENPAS
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U.S. Department of Justice



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Proof of Claim was served on the 14th day of June, 2007, by the Court's electronic case filing system pursuant to D.N.J. LBR 7005-1 to all parties participating in that system, and by First Class Mail to the following:

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 Jerome W. MacLaughlin ✓